

# SUMMARY OF EMPLOYMENT RESTRICTIONS

***NOTE: THIS IS ONLY A “BARE BONES” GUIDE; IT CANNOT TAKE THE PLACE OF AN OPINION OF AN ETHICS COUNSELOR. YOUR ETHICS COUNSELOR WILL BE FOUND IN THE JAG OFFICE WHICH SERVICES YOUR ORGANIZATION.***

This Summary of Employment Restrictions is divided into four sections covering restrictions of general applicability as well as those focusing on a DA employee's status, i.e., seeking employment, engaged in off-duty employment, or engaged in post-government employment.

## **I. General Restrictions**

**Applicable to officers, enlisted personnel, and civilian employees**

**a. If you are participating personally and substantially** in a procurement in excess of the simplified acquisition threshold (over \$100,000), you must promptly report in writing to your supervisor and to the agency ethics official any contacts with a bidder or offeror in that procurement concerning non-Federal employment, and either reject the possibility of non-Federal employment or disqualify yourself from any further participation in the procurement unless the agency authorizes you to continue (41 U.S.C. §423; FAR 3.104-4). See your Ethics Counselor for a sample recusal memorandum.

**b. You may not--**

knowingly disclose	to unauthorized individuals	contractor bid or proposal information or source selection information prior to the award of the contract (41 U.S.C. §423(a); FAR 3.104-5).
convert	to your use or the use of another	any government records or things of value, including “inside information” obtained while in government service (18 U.S.C. §641).
disclose	trade secrets, confidential commercial information, or classified information	except as provided by law (18 U.S.C. §§1905, 793, & 794).

## **II. Restrictions Applicable To Seeking Employment**

**Applicable to officers, enlisted personnel, and civilian employees**

**1. Prior to any employment contacts,** Federal personnel must ensure that a prospective employer is not:

- (1). An organization that has an interest in how they perform or don't perform their official duties,
- (2). A competing contractor for a procurement on which they are “procurement officials” or have been within the last year; or,
- (3). A contractor on a procurement for which they performed any function relating to contractor selection, quality assurance, contract administration, or management of the program.

If a prospective employer fits into one of these categories, or otherwise has business interests with DOD, issues are raised that must be resolved first, before any contact is made.

**2. You may not--**

seek employment (including pre-negotiation activity)	with a person or company	while you are participating in an official matter that has a direct and predictable effect on their financial interests (5 C.F.R. §§2635.601-604; JER 2-204c). See
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**Note 1.**

participate personally and substantially in any matter	concerning a person or company	while you are negotiating for employment with that person or company (18 U.S.C. §208(a)). <b>See Note 2.</b>
except for authorized transition assistance benefits and other supervisor-approved instances.	use government resources	in job hunting (5 C.F.R. §§2635.704 & 2635.705; JER 2-301;31 U.S.C. §1344; DOD Manual 4525.8). <b>See Note 3.</b>
work for	the same or different Federal agency	while retaining your original government position (5 U.S.C. §5536). <b>See Note 4.</b>

**Note 1:** See your Ethics Counselor for a sample disqualification memorandum. Written disqualification is required before sending resumes or engaging in “informal” discussions with specific companies. Disqualification is not required before discussing opportunities with a “headhunter” as long as the identity of the potential employer(s) is not disclosed to you. Your supervisor must approve your written request for disqualification.

**Note 2.** The financial interests of your spouse, your minor child, or your business partner can also trigger this prohibition.

**Note 3:** Some minor relaxation of this rule may occur in the case of a federal government downsizing, e.g., JER 2-301a(2) permits use of government communications systems (telephone and computers) for job-searching if done on personal time, does not burden the communication system, etc.,. Additionally, certain military members may use permissive TDY for seeking employment and finding new residences.

**Note 4:** To avoid appearances of favoritism or preferential treatment, 5 U.S.C. §3326 prohibits the appointment of a retired member of the Armed Forces to a civil service position (including a nonappropriated fund activity) in DOD or a component thereof for 180 days after retirement unless the appointment is approved by the Secretary concerned or his designee, the retiree is appointed to a position for which the basic rate of pay has been increased under 5 U.S.C. §5303, or a state of national emergency exists.

**b. You--**

may accept--	meals, lodging transportation, and other benefits normally provided by the prospective employer in connection with bona fide employment discussions--	even though a prospective employer is a government contractor or other “prohibited source” (5 C.F.R. §2635.204(e)(3)). <b>See Note 5.</b>
may obtain--	a letter of recommendation--	from other government employees on official letterhead if (1) the letter is based on the employee’s personal knowledge of your ability or character and (2) either the employee has dealt with you in the course of his or her government employment or you are applying for federal employment (5 C.F.R. §2635.702(b)).
may obtain--	a letter of recommendation--	from a DOD contractor employee as long as you do not use your government position to coerce or induce the person to write the letter (5 C.F.R. §2635.702(a)).
must register--	as an agent of a foreign principal--	if you wish to represent certain foreign activities in the United States (22 U.S.C. §§611-621; 28 C.F.R., Part 5; JER 9-701c).

**Note 5:** To avoid a violation of the rules prohibiting your acceptance of gratuities from a prohibited source, make certain the prospective employer provides the same job interview benefits to all potential candidates for the same or similar position.

### **III. Restrictions Applicable to Off-Duty Employment**

**1. Depending upon your status (military or civilian) and the organization to which you are assigned or attached (i.e., MEDCOM, AMEDDC&S, USAG, etc.), you may be required to request in writing permission/approval to engage in off-duty employment from a commander at some level or to report such employment. See DOD Directive 6025.7, para. F6; AR 40-1, para. 1-8; HSC Regulation**

600-3, para. 4; AMEDDC&S Regulation 600-10, para. 4, and Fort Sam Houston Pamphlet 600-1, para. 7.

2. A DOD employee, other than a special Government employee, who is required to file a financial disclosure report (OGE 450 or 450-A or SF 278) shall obtain written approval from an agency ethics official before engaging in a business activity or compensated outside employment with a prohibited source (JER 2-206a).

3. Applicable to officers, civilian employees, and some enlisted personnel (see Note 6).

a. You may not--

	participate personally and substantially	in any matter that affects the financial interests	of the company with whom you have the employment arrangement (18 U.S.C. §208(a)). <b>See Note 6.</b>
while still employed by DOD	act as a representative	for anyone, including your new employer	before any Federal agency (18 U.S.C. §205(a); JER 5-403).

**Note 6.** Also applicable to enlisted personnel; see JER 5-300b(1)(a) and 5-301.

b. If taking terminal leave, you still remain a government employee while on terminal leave and all of these rules still apply.

## **IV. Restrictions Applicable to Post-Government Employment**

1. If you are a General Officer or a Senior Executive Service employee, you must file a final Standard Form 278 within thirty (30) days after, but not earlier than fifteen (15) days before, the date of termination of your federal employment (at the end of your terminal leave if taking terminal leave) (5 U.S.C. App. 6 §§101-111; JER 7-200 through 7-209).

2. Applicable to all officers and civilian employees (including special Government employees), and some enlisted personnel (see Note 8).

As a Federal employee you may not--

ever	make, on behalf of anyone else, with the intent to influence, any communication to or appearance before	any Government officer or employee (excluding members of Congress and their legislative staff) regarding	any particular matter involving specific parties in which you ever participated personally and substantially for the Government (18 U.S.C. 207(a)(1); JER 9-300).
within 2 years after termination of your Government service	make, on behalf of anyone else, with the intent to influence, any communication to or appearance before	any Government officer or employee regarding	any particular matter involving specific parties that you know (or reasonably should know) was pending under your official responsibility in the last year of Government employment (18 U.S.C. 207(a)(2); JER 9-300). <b>See Note 7.</b>
after <b>military</b> retirement	work for	a foreign government or for a corporation or institution owned or controlled by a foreign government	without prior approval (37 U.S.C. §908). <b>See Note 8.</b>

**Note 7.** A matter is under your "official responsibility" if you have the power, either directly or through a subordinate, to approve, disapprove, or otherwise direct a government action.

**Note 8.** Also applicable to enlisted personnel; see JER 9-701.

3. Applicable to military and civilian employees who participated in procurements meeting the following criteria.

**IF you participated in any of the following activities relating to a specific contractor:**

**(1) Serving as a procuring contracting officer or member of source selection board or the chief of a financial or technical evaluation team for a contract in excess of \$10 million, or**

**(2) Serving as a program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10 million, or**

**(3) Personally making the decision to (a) award or modify a contract or subcontract or task order or delivery order in excess of \$10 million, or (b) establish overhead or other rates valued in excess of \$10 million, or (c) approve payment in excess of \$10 million, or (d) pay or settle a claim in excess of \$10 million;**

**THEN as a former government employee you may not--**

for one year after performing any of the above described activities	accept compensation from that particular contractor	for any service whatsoever	regardless of whether it involves any Federal government matter (41 U.S.C. §423d). <b>See Note 9.</b>
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**Note 9.** You may request an advisory opinion from your Ethics Counselor concerning this provision. A former Federal employee sometimes may accept compensation from a division or affiliate of a company that does not produce the same or similar products or services. These rules are effective after December 31, 1996

#### **4. Applicable only to “senior employees.”**

**IF you held a military grade 0-7 or above, or an SES position at ES -5 or above, you may not--**

within 1 year after termination of service	make, on behalf of anyone else, with the intent to influence, any communication to or appearance before	any officer or employee of a department or agency in which you served during your last year as a “senior employee” regarding	any matter on which you seek official action (18 U.S.C. §207(c); JER 9-300). <b>See Note 10.</b>
within 1 year after termination of service	aid or advise a foreign entity, or represent a foreign entity before the Government, with the intent to influence	any Government entity, officer, or employee regarding	any official decision (18 U.S.C. §207(f); JER 9-300).

**Note 10.** The DOD Standards of Conduct Office position is that if your last job is at the DOD level, the restriction applies to attempts to influence DOD-level organizations (e.g., defense agencies) AND your individual service component.